

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EPHRIOM SMOTHERS and U.S. POSTAL SERVICE,  
POST OFFICE, Louisville, Ky.

*Docket No. 95-2366; Submitted on the Record;  
Issued January 8, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case record and concludes that the Office did not meet its burden of proof in this case.

In the present case, the Office has accepted that appellant, a mail clerk, sustained aggravation of bursitis of the left shoulder and aggravation of cervical and lumbosacral osteoarthritis as a result of the performance of his federal employment duties. Appellant initially stopped work on May 26, 1990 and then intermittently returned to light-duty work until February 12, 1993 when he stopped work altogether. The Office paid appellant appropriate wage-loss benefits for the periods that he did not work. By decision dated September 26, 1994, the Office terminated appellant's compensation benefits, effective that day, on the grounds that the weight of the medical evidence established that all work-related disability had ceased. In an accompanying memorandum, an Office claims examiner stated that the report of Dr. Edward Bell, an impartial specialist was well rationalized and constituted the weight of the medical evidence in this case. The Office denied appellant's application for review by decision dated March 2, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup>

The medical evidence of record establishes that appellant's treating physicians, Dr. David H. Jones and Dr. William L. Voskuhl, family practitioners, continued to submit attending physicians' reports to the record during 1993 and 1994 which noted appellant's

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

diagnoses as chronic bursitis left shoulder, disc protrusion L5-S1, C7 radiculopathy, cervical and lumbar sacral spine osteoarthritis and which stated that appellant remained disabled for work. In a narrative report dated November 19, 1993, Dr. Jones noted that in his physical examinations of appellant during August, September and October 1993 appellant was very tender with marked decreased range of motion in the cervical area, inability to fully abduct the left upper extremity, and with no extension of his lumbar spine. Dr. Jones stated that he felt appellant had legitimate complaints of cervical pain and that he was disabled from work in the light duty he had previously attempted as looking downwards and moving his head from left to right caused cervical pain. Dr. Jones recommended that appellant undergo a computerized tomography (CT) examination. A CT examination was performed on December 23, 1993 which revealed an osteophyte arising from the left posterolateral aspect of the 6<sup>th</sup> cervical vertebral body. A magnetic resonance imaging (MRI) scan of the cervical spine was performed on March 28, 1994 which revealed C5-6 cervical spondylosis hypertrophic spurring most pronounced posteriorly on the left at C5-6, and no disc herniation, protrusion or spinal stenosis.

The Office obtained second opinion reports from Dr. Robert F. Baker, a Board-certified orthopedic surgeon, dated July 1 and August 9, 1993. In these reports Dr. Baker related that appellant had some long-standing degenerative changes involving the lower and mid cervical spine and also degenerative changes involving the left AC joint. Dr. Baker noted that he did not think there was anything unusual about appellant's employment as compared with any other occupation that could certainly have in and of itself caused or aggravated his osteoarthritis. Dr. Baker concluded that appellant could return to light-restricted duty.

The Office evaluated this medical evidence and properly concluded that a conflict existed in the medical opinion evidence as to whether appellant remained totally disabled due to his accepted employment injuries. The Office then referred appellant to Dr. Edward E. Bell for an impartial medical evaluation. Dr. Bell submitted reports to the record dated May 3, July 22 and September 1, 1994. He concluded that appellant's cervical spine films showed minimal degenerative changes at C5-6 and C6-7 and that the bursitis of the left shoulder was a temporary aggravation of a preexisting condition. Dr. Bell stated that appellant's neck, extremity and back conditions were not work related as appellant "did not provide a good mechanism of injury to account for his significant long term complaints." He opined that appellant's pain complaints were not backed up by his physical examination or his x-ray report and MRI. Dr. Bell indicated that appellant could return to work as a mail clerk with restrictions of no lifting over 15 pounds and no reaching above the shoulder and that these restrictions were necessary due to appellant's left shoulder bursitis. He stated that appellant's temporary aggravation of the preexisting bursitis had ceased as there were no objective findings upon examination to support that appellant had ongoing residuals due to his factors of employment as a clerk, and that any aggravation of appellant's cervical spine osteoarthritis and lumbosacral osteoarthritis had ceased as soon as he stopped working.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>2</sup>

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<sup>2</sup> *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

The Board concludes that Dr. Bell's reports are not sufficiently well rationalized to constitute the weight of the medical opinion evidence. Dr. Bell opined in his reports that appellant's only work-related condition was the aggravation of his shoulder bursitis. Dr. Bell stated that appellant had not "provided a good mechanism of injury" to explain why he would have sustained a work injury to his neck, arms or back. He did not provide medical rationale to explain his opinion that appellant's aggravation of the cervical and lumbar osteoarthritis ceased when he stopped working. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.<sup>3</sup> To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand. Where no such rationale is present, the medical opinion is of diminished probative value.

While it is true that the mechanism of injury, *i.e.*, appellant's continued work activities, ceased when appellant stopped working, Dr. Bell has not explained with medical rationale and based upon a proper factual background, including evaluation and explanation of the x-ray, CT scan and MRI evidence of record, how medically it could be determined that the accepted osteoarthritic aggravations had ceased. Without medical rationale to support his conclusory opinions, Dr. Bell's reports are of limited probative value and are not sufficient to meet the Office's burden of proof.

The decisions of the Office of Workers' Compensation Programs dated March 2, 1995 and September 26, 1994 are hereby reversed.

Dated, Washington, D.C.  
January 8, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> See *Michael Stockert*, 39 ECAB 1186 (1988).